

T H E
Lords PROTESTS

I N T H E
Last Session of Parliament;

Particularly touching the

Late ~~Horrid~~ and Detestable

CONSPIRACY.

B E I N G A N
APPENDIX

To the REPORTS and APPENDIXES of
the Committees of both Houses.

L O N D O N :

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MDCCXXIII.

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THE
Lords PROTEST

in the
Session of Parliament

the House of Commons

COMPARATIVE

APPENDIX

to the Reports and Appendices of
the Committees of both Houses

LONDON:
Printed and Sold by J. G. & J. W. Smith, 15, Pall Mall.
MDCCCXXXII

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Die Jovis 11^{mo} Octobris 1722.

THE Amendments in the 16th and 17th Lines of the Bill suspending the *Habeas Corpus* Act, in relation to the Time of the Continuance of the said Bill, was read a Second Time,

And the Question was put, Whether to agree with the Committee in the said Amendments?

It was resolved in the Affirmative.

Dissentient

1. The Act commonly called the *Habeas Corpus* Act is admitted, on all Hands, to be the great Bulwark of the Liberty of the Subject: And therefore, altho' in Cases of actual Rebellion, and intended Invasion, that Act has been at Times before suspended, yet it was done sparingly, and by Degrees; and the utmost Term unto which it has hitherto been suspended at any Time, has been the Term of Six Months: Which Consideration puts us under a very melancholy Apprehension for the very Being or Effect of that excellent Law, since the present Suspension of it for a Year or more, will be full as good an Authority, in Point of Precedent, for the suspending it, on another Occasion, for the Term of Two Years, as any former Precedent is now for the present Suspension during One Year, or more.

2. The detestable Conspiracy, which occasions the present Suspension, having been discover'd and signify'd to the City of *London* about Five Months since, and divers Persons imprisoned for it a considerable Time past, we cannot but conceive it to be highly unreasonable to suppose, that the Danger of this Plot, in the Hands of a faithful and diligent Ministry, will continue for a Year or more yet to come; and that in so high a Degree, as to require a Suspension of the Liberty of the Subject (for so we take it to be) during all that Time.

3. His Majesty not having visited his Dominions abroad these two last Years, will very probably leave the Kingdom the next Spring to that End; in which Time, this great Power of suspecting and imprisoning the Subjects at Will, and detaining them in Prison till the 24th of *October* 1723, and for as much longer Time, as till they can, after that, take the Benefit of the *Habeas Corpus* Act (if they can then do it at all) will be lodged in the Hands of some of our Fellow-Subjects, who we are not so sure will be above all Prejudices and Partialities, as we are that his Majesty will.

4. This weakens the Provisions made for the Lords and Members of the other House of Parliament, that they shall not be committed, or detained, fitting the Parliament, without the Consent of the Houses respectively, since it is very probable the Parliament will not be sitting the greatest Part of the Time for which this Bill, if enacted, will continue a Law: And such is the Weakness of human Nature, that we cannot be assured, but that the Apprehension of what may befall any Member of Parliament while the Parliament is not sitting, may have some Influence on the Freedom of acting in Parliament.

5. The Dictatorial Power was always ended, or laid down immediately, when the urgent Occasion for it was over; and it was never continued much longer, till a little before the great State, from which all others draw so many Maxims of Government, lost its Liberties.

<i>W. Ebor</i>	<i>Scarsdale</i>	<i>Bathurst</i>
<i>Craven</i>	<i>Anglesey</i>	<i>Aylesford</i>
<i>Litchfield</i>	<i>Osborn</i>	<i>Masbam</i>
<i>Ashburnham</i>	<i>Trevor</i>	<i>Uxbridge</i>
<i>Comper</i>	<i>Bingley</i>	<i>Gower.</i>
<i>Strafford</i>	<i>Chester</i>	
<i>Guilford</i>	<i>Hay</i>	

Then the Bill was read a third Time with the said Amendments, and passed.

Dissentient

<i>Scarsdale</i>	<i>Litchfield</i>	<i>Hay</i>
<i>Comper</i>	<i>Gower</i>	<i>Ashburnham</i>
<i>Osborn</i>	<i>Uxbridge</i>	<i>Craven</i>
<i>Anglesey</i>	<i>Guilford</i>	<i>Strafford.</i>
<i>Masbam</i>	<i>Bingley</i>	
<i>Lechmere</i>	<i>Bathurst</i>	

Die Veneris 26^{to} Octobris 1722.

TH E Lord Viscount *Townshend* having, by his Majesty's Command, signified to the House, "He had just Cause to suspect, that the Duke of *Norfolk* was engaged in the Conspiracy now carrying on, and did therefore desire the Consent of the House to his being committed, and detain'd on Suspicion of High Treason, according to the Act lately pass'd for suspending the *Habeas Corpus* Act.

The House (upon the Question) resolv'd to consent that the said Duke may be committed and detain'd.

Dissentient

Anglesey.

1. Because we apprehend it to be one of the ancient undoubted Rights and Privileges of this House, That no Member of the House be imprisoned or detained during the Sitting of Parliament, on Suspicion of High Treason, until the Cause and Grounds of such Suspicion be communicated to the House, and the Consent of the House thereupon had to such Imprisonment or Detainer; which ancient Right and Privilege is recognized and declared in plain, express, and full Terms, in the Act passed this Session of Parliament, to which the Message from his Majesty refers.

2. Because it appears clear to us, not only from former Precedents, even when no such Law was in Being, as that abovementioned, but also from the very necessary Construction of the Proviso therein concerning the Privileges of Parliament, that the House is intituled to have the Matter of the Suspicion communicated to them in such manner as is consistent with the Dignity of the House, and will enable them to deliberate and found a right Judgment thereupon for or against the Imprisonment or Detainer of the Person concerned: But to maintain that, while that Law shall be in Force, it shall be sufficient, in order to obtain the Consent of the House, to communicate a general Suspicion, that a Member of the House is concerned in a traiterous Conspiracy, without discovering any Matter or Circumstance to warrant such Suspicion, is, in our Opinion, an unjustifiable Construction of the said Proviso, and such as wholly deprives the House of the Liberty of giving their free and impartial Advice to the Throne on this Occasion; and such a Construction being made upon a Law so plainly intended by the Wisdom of this Parlia-

Parliament, to assert the Privileges of both Houses, appears to us to pervert the plain Words and Meaning of it, in such a manner as renders it wholly destructive to those very Privileges intended to be preserved.

3. Because his Majesty having, in Effect, required the Judgment and Advice of the House, touching the Imprisonment and Detainer of the Duke of Norfolk, we ought not, as we conceive, either in Duty to his Majesty, or in Justice to the Peer concerned, to found our Opinions concerning the same on any Grounds, other than such only as his Majesty has been pleased to communicate in his Message: And his Majesty, in his Message, having communicated only a general Suspicion, we think we cannot, without the highest Injustice to the Duke, and the most palpable Violation of the most valuable Privilege belonging to every Member of this House, give our Consent to his Imprisonment or Detainer, and thereby make our selves Parties, and, in some Degree, the Authors of such his Imprisonment, until we have a more particular Satisfaction touching the Matter of which he stands suspected, more especially considering the long and unprecedented Duration of the Act above-mention'd, whereby the Benefit, not only of the Act commonly called the *Habeas Corpus* Act, but of *Magna Charta* it self, and other valuable Laws of Liberty, are taken from the Subjects of this Realm, and extraordinary Powers are given to the Persons therein mentioned, over the Liberties of the People, for a Twelvemonth and upwards.

4. Because we think it inconsistent, as well with the Honour and Dignity, as with the Justice of this House, in the Case of the meanest Subjects, to come to Resolutions for depriving them of their Liberty, upon other than clear and satisfactory Grounds: But as the Members of both Houses of Parliament are, by the Laws and Constitution of this Kingdom, invested with peculiar Rights and Privileges, of which the Privilege before-mention'd is a most essential one, as well for the Support of the Crown it self, as for the Good and Safety of the whole Kingdom, we cannot, as we conceive, without betraying these great Trusts which are reposed in us, as Peers of the Realm, agree to a Resolution which tends to subject every Member of this House, even sitting the Parliament, to unwarrantable and arbitrary Imprisonments. And we have the greater Reason to be jealous of the Infringment of this Privilege on this Occasion, because it had been easy, as we think, for those who had the Honour to advise the framing the said Message, to have communicated to this House the Matters of which the Duke of Norfolk stands suspected, in such a manner as might be consistent with the Privileges of this House, and, at the same time, to have avoided any Danger or Inconvenience to the Crown, with regard to the future Prosecution of the said Duke, (if any such shall be).

5. It is the known Usage and Law of Parliament, that this House will not permit any Peer to be sequestred from Parliament on a general Impeachment of the Commons, even for High Treason, till the Matter of the Charge be specified in Articles exhibited to this House; which explains to us the Nature of the Privilege intended to be secured by the proviso, and is the highest Instance of the Care of this House to preserve it from being violated on any Pretence whatsoever. But, in our Opinions, it must create the greatest Inconsistence and Repugnancy in the Proceedings of the House, to consent that a Peer of the Realm should be imprison'd or detain'd, sitting the Parliament, on a Suspicion of High Treason only, not warranted, for ought appears to us, by any Information given against him upon Oath, or otherwise, and no particular Circumstance of such Suspicion being communicated to the House.

6. Because a Resolution so ill grounded, as this appears to us, may produce very ill Effects in the present unhappy Conjunction of Affairs, by creating fresh Jealousies in the Minds of his Majesty's Subjects, who cannot fail of entertaining certain Hopes of the Safety of his Majesty's Person and Government, against all his Majesty's Enemies, from the Advice and Assistance of both Houses of Parliament, whilst they continue in the full Enjoyment, and free Exercise of their ancient and legal Rights and Privileges; but, on the other

other Hand, may be alarm'd with new Fears for the Honour and Safety of his Majesty and his Government, by a Resolution taken by this House for the Imprisonment of a Peer of the Realm, in such manner as, in our Opinion, is highly injurious to his Person, and also to the Privileges of every other Peer of the Realm, and which may prove of fatal Consequence to the Constitution of both Houses of Parliament.

W. Ebor'

Franc. Cestrien'

Scarsdale

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Uxbridge

Oxford

Strafford

Cowper

Trevor

Lechmere

Ashburnham

Guilford

Bathurst

Bingley

Foley

Compton

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Die Lunæ 21^{mo} Januarii 1722.

A Motion was made, That the Judges of the King's Bench be ordered to cause the Tryal of *Christopher Layer*, Esq; to be forthwith Printed and Published, the same being first perused by the King's Council.

And a Question being stated thereupon, after Debate, the previous Question was put, Whether the said Question shall now be put?

It was resolved in the Negative.

Not Content 53.

Content 32.

Dissentient?

1. Because it appeared to us on the Debate of the main Question, that there has been an unnecessary and affected Delay in the Printing and Publishing the said Tryal, it being full two Months since *Christopher Layer* was tried; and Direction having been given for the speedy Publishing thereof, so long since as the 27th of *November* last, as appears by an Advertisement printed by Authority in the *Gazette*: And it having been allowed in the Debate, that the Delay was extraordinary, and no Fact having been laid before the House, sufficient, as we apprehend, to excuse such Delay, we think that the main Question ought to have been put, as the only Security, in our Opinion, against any further Neglect, and to prevent any Imputation on the Honour of the House, for countenancing or conniving at such Delay.

2. This House having received no manner of Satisfaction, since his Majesty's most gracious Speech from the Throne, touching the horrid Conspiracy therein communicated; and no Step having been taken, for ought appears to us, either in Parliament, or elsewhere, for obtaining the Justice due by the Laws of the Land to any of the Conspirators, except the said *Layer*, tho' his Majesty was pleased to assure this House, in his Speech from the Throne, that some of the Conspirators were then taken up and secured; we think, that the main Question ought to have been put, whereby the Publication of the said Tryal might have been quickned, and thereby the Nation received such Satisfaction concerning the said execrable Conspiracy, as could be collected from the said Proceeding, and this House have been enabled to make such Use thereof as should appear necessary, in their Wisdom, for the Honour, Interest, and Safety of his Majesty and his Kingdoms.

3. Because we are apprehensive, that the Delay in publishing the said Tryal may have contributed to create Jealousies concerning the said Conspiracy, and may have encouraged ill affected Persons to foment the same, to the great Prejudice of his Majesty's Government: And as, in our Opinion, the speedy Publishing the said Tryal, if the same had been done, might have conduced to the preventing of those Mischiefs, we also conceive, that the further

further Growth of them might have been check'd, if the main Question had been put, and carried in the Affirmative.

4. Because we think it of great Consequence to his Majesty's Service, that the Publication of the said Tryal should have been made under the strictest Security against all Partiality, or other Abuse relating thereto; and therefore we think the main Question ought to have been put, whereby the Care and Inspection thereof would have been lodged, by the Authority of this House, in the Hands of the Judges, to whom it properly belongs, and its falling into any other Hands not so proper, or not so immediately responsible to this House, would have been prevented.

Anglesey
Trevor
Bathurst
Strafford
Osborn
Fr. Cestrien

Lechmere
Cowper
Foley
Aylesford
Compton
Gower

Craven
Hereford
Ashburnham
Weston.

Then a Motion being made, and the Question being put, That the Judges of the *King's Bench* do attend in their Places on *Thursday* next, and that the King's Council who were concerned in the Tryal of *Christopher Layer*, and also the Council for the said *Layer* at the said Tryal, and Mr. *Samuel Buckley*, and the Person or Persons who took the said Tryal in Short-hand, do attend at the Bar of this House at the same Time,

It was resolved in the Negative.

Dissentient

1. Because the House having resolved, That the Question for ordering the Printing the Tryal of *Christopher Layer* should not now be put, we are of Opinion, that it is thereby made necessary, for the Honour of the House, that the Occasion of the Delay should be enquired into; for without such Enquiry, we are apprehensive that the Proceedings of this House may be misconstrued, as tending to countenance such Delay.

2. Because we think it the Right of this House to enquire into all Neglects or Abuses which concern the Publick; and tho' it was objected in the Debate, that such Enquiry might carry some Imputation on the Judges, or other Persons concerned, we think that That Objection may be equally assign'd against all Enquiries, but is inconsistent with the Honour and Dignity of the House, and ought not, as we conceive, be put in the Balance with the Honour of the House, and the publick Service, to which the Question, in our Opinion, has an apparent Tendency.

Anglesey
Strafford
Bathurst
Compton
Osborn
Fr. Cestrien

Brook
Gower
Foley
Trevor
Lechmere
Weston

Craven
Aylesford
Ashburnham
Cowper.

House of Lords, Jan. 29th 1722.

THE House, according to Order, proceeded to take into Consideration the Protestation entred upon *Monday* the 21st of this Instant, touching the Motion for ordering the Judges to cause the Tryal of *Christopher Layer* to be Printed: And it being moved to resolve, That it is a groundless Affertion

sertion in the said Protestation (*That it appeared, on the Debate, that there had been an unnecessary and affected Delay in Printing and Publishing the Tryal of Christopher Layer*) and the utmost Indignity to this House to suggest, that any Question was necessary to have been put for preventing an Imputation on the Honour of this House for countenancing or conniving at such Delays; and a Question being stated thereupon, it was proposed, after the Word [*Debate*] to add these Words [*to the Lords who signed the Protestation*] which being objected to,

The Question was put, Whether these Words shall be made Part of the Question?

It was resolved in the Negative.

Content 34.

Not Content 64.

Then it was proposed, after the Word [*Question*] to insert [*in the Opinion of the same Lords*] before the Words [*was necessary*].

It was resolved in the Affirmative.

Content 62.

Not Content 35.

A Motion was made to resolve, That the Tryal had been Printed and Published with as much Expedition as the Length and Nature of the said Tryal, and the careful Perusal and Examination thereof by the Judges could admit of, and in as little Time as has generally been accustomed in the like Cases; and that it is an unjust Insinuation, that the Authority of this House was wanting, for lodging the Care and Inspection of the said Tryal in the Hands of the Judges, or that there was any Danger of its falling into any other Hands, or that the same had been under the Direction of any other besides the Judges.

After Debate, it was proposed to leave out the Words [*and that it is an unjust Insinuation*] and to the End of the Question.

The Question was put, That these Words do stand Part of the Question.

It was resolved in the Affirmative.

Content 58.

Not Content 32.

The PROTESTATION to the First Resolution of Jan. 29. 1722.

Dissentient?

1. **B**Ecause the Assertion and Suggestion in the Protest, intended to be censured by the Resolution, are qualified, as the Amendment offered would have stated them, if admitted, by being restrained to the Opinion of the Lords who signed the Protestation. But those Restrictions are wholly omitted in the Resolution, and we are clearly of Opinion, That if the Assertion and Suggestion had been set forth in the Resolution, as they stand in the Protestation, they could not have been censured with any Colour of Justice; but that the said Omission being, as we conceive, of a Circumstance extremely material, we think the Censures contained in the Resolution are not applicable to the Assertion and Suggestion found in the Protestation, but to such as are of a different Nature.

2. The restraining the Assertion used in the Protestation to the Apprehension or Opinion of the Lords Protesting, where it contradicts the Opinion of the House, is, as we conceive, so much of the Essence of the Protestation with Reasons, that, of the great Number of Instances of such Protestations standing in the Journals of this House, not one would be found regular among them, if that due Caution and Respect to the Opinion of the Majority was omitted: And therefore it seems clear to us, that the like Censure might be as justly passed on all the Protestations with Reasons, that were ever entered, if they were recited and represented in the same manner as we conceive this to be.

Litch-

Litchfield
Fr. Cestrien
Asbburnham
Hereford
Brook
Bathurst
Gower
Montjoy

Foley
Strafford
Exeter
Bingley
Oxbridge
Osborn
Anglesey
Cowper

Trevor
Guilford
Aberdeen
Scarfsdale
Craven
Lechmere
Hay
Compton

**The PROTESTATION to the Second Resolution of
Jan. 29. 1722.**

Dissentient

BEcause we conceive it to be contrary to the Nature and Course of Proceedings in Parliament, That a complicated Question, consisting of Matters of a different Consideration, should be put, especially if objected to, that Lords may not be deprived of the Liberty of giving their Judgments on the said different Matters, as they think fit.

Signed by the same Lords as that above.

**The PROTESTATION to the Third Resolution of
Jan. 29. 1722.**

Dissentient

1. **B**Ecause when the Question was moved on the 21st of this Instant, in order to appoint a Day for the House to enquire if the Printing of *Layr's* Tryal had been dispatched with all proper Expedition; or, if not, where the Fault lay; which would naturally have led us to have seen, if it had fallen into any other Hands than it should have done. Tho' we thought it highly reasonable, the Majority of the House then did not; and we were yet willing to have given into the same Examination: But we cannot conceive it to be fit or agreeable to the Dignity or regular Course of Proceedings in this House, to vote or resolve on Matters of Fact as are contained in this Resolution, without any Examination at all; or any Evidence given to support them, and which, in their Nature, as we think, cannot be within the Knowledge of any Lord present in the Debate.

2. As for the Insinuation with which the Protest is charged by this Resolution, we do not apprehend the Protestation to be justly liable to that Charge. But supposing it to be so, we cannot yet but be of Opinion, that the permitting that Matter to have been fully enquired into, would have been the properest and best Method of preventing or answering that Insinuation.

Litchfield
Fr. Cestrien.
Hereford
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Lechmere
Bathurst
Gower
Montjoy

Foley
Hay
Strafford
Exeter
Bingley
Oxbridge
Compton
Osborn

Anglesey
Cowper
Trevor
Guilford
Aberdeen
Scarfsdale
Craven

A Motion was made, That this House, not capable of doubting of the Truth of the traitorous Conspiracy communicated to them by his Majesty, in his most gracious Speech from the Throne, has even since that Time received very great Satisfaction from some convincing Proofs touching the same, and is firmly perswaded, that such farther Satisfaction will be yet in due

due Time given, as must render it impossible for any one to doubt thereof. Upon this Resolution, a Protest was made by Twenty Two Lords, for the Reasons following.

Dissentient?

1. Because, to the best of our Apprehension, no Part of the Protestation gave Occasion for the putting such a Question: For it was, as we conceive, admitted in the Protestation, that his Majesty's most gracious Speech from the Throne had given Satisfaction as to the Truth of the Conspiracy in general; and the excepting *Layer's* Tryal therein did plainly allow that the said Tryal had, as far as it went, opened the Particulars; and yet the Resolution, as we take it, carries with it an Insinuation, that the Protestation had raised a Doubt concerning the Truth of the said traiterous Conspiracy; which insinuation is, in our Opinion, entirely groundless.

2. The said several Resolutions importing censuring, as we conceive, the said Protestation, and being not warranted by more than one Precedent, that we can find in the Journals of this House; and the Liberty of Protesting with Reasons being an unquestionable Right, and essential Privilege of the whole Peerage, we are of Opinion, that the said Resolutions tend to discourage and discountenance the due Liberty of Protesting, and, in that respect, may be, as we apprehend, of dangerous Consequence.

Litchfield
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Bathurst

Gower
Strafford
Anglesey
Bingley
Scarsdale
Foley
Fr. Cestrien
Lechmere

Guilford
Craven
Hay
Hereford
Brook
Montjoy.

Die Sabbati 16^{to} Feb. 1722.

THE Amendments in the *Bill for punishing Mutiny and Desertion* were, according to Order, reported, and the Amendment for inserting the Number of Forces thought proper to be kept on Foot for the ensuing Year, consisting of 16449 effective Men, Officers included, and 1815 Invalids, being read a second Time,

The Question was put, Whether to agree with the Committee in this Amendment?

It was resolved in the Affirmative.

Dissentient?

1. Because, as we conceive, the keeping an Army of regular Troops in this Kingdom under martial Law, consisting of a greater Number than what we take to be necessary for the Guard of the King's Person, and Defence of the Government, is of the most dangerous Consequence to the Constitution of this Kingdom, and, in our Opinion, may bring a total Alteration of the Frame of our Government, from a Legal and Limited Monarchy, to a Despotick. And we are induced to be of this Judgment, as well from the Nature of Armies, and the Inconsistence of so great a military Power and martial Law with the Civil Authority, as from the known and universal Experience of other Countries in *Europe*, which, by the Influence and Power of Standing Armies, in Time of Peace, have, from Limited Monarchies (like ours)

ours) been changed into Absolute; for which Reason, we can't give our Consent to this Amendment, whereby the present Number of Troops, amounting in the whole (Invalids included) to Fourteen Thousand odd Hundred Men (which we think abundantly sufficient for all good Purposes) will be increased to near Four Thousand more, altho' there be at this Time no Ground to apprehend an Invasion from a foreign Enemy, or, as we believe, any Insurrection or Rebellian at Home.

2. Because that which seems to have given Rise to this Augmentation of the Army, is the late treasonable Conspiracy, which his Majesty, at the opening of this Sessions, acquainted his Parliament with; and that Conspiracy having been discovered above Eight Months since, and the further Detecting and Punishing the Conspirators having been ever since in the Hands of a faithful and diligent Ministry, we cannot think it at all probable the Conspiracy should still be carrying on; or if any Dregs of it should be yet remaining, that the Government cannot be easily secured by a Civil Authority, assisted by so great a Number of Troops as are at present on Foot: And therefore we cannot think our selves justifiable to the Kingdom (whose Rights and Privileges we are intrusted to preserve) had we given our Votes for this Augmentation of Troops, when no evident Necessity, or just Occasion appeared to us for such an Increase.

3. Because the Act passed this Session, to enable his Majesty to apprehend and detain in Custody any Person (suspected of being engaged in any treasonable Conspiracy) for above Twelve Months, tho' that Power had never been granted to the Crown before, for Half that Time at once (and that when there was an actual Rebellion, or expected Invasion) was so great a Power added to the former Authority of the Crown, that we cannot but think it altogether sufficient to prevent any Mischief from treasonable Plots or Practices, which may be carry'd on by any rebellious or discontented Persons, without increasing the Army, which, in its present State, is not submitted to, but as necessary for avoiding a greater Evil.

4. Tho' the intended Augmentation by this Bill is intended only for One Year, yet we fear this will be a Means of continuing them in Perpetuity; for we think it probable, there will, at all Times hereafter, be easily found as good Reasons for continuing this Increase, as there is now for making it.

5. Because we think the greatest, and only lasting Security to his Majesty and his Government, is in the Hearts and Affections of his Subjects; and if the Disaffection or Discontents which have of late happened from some unfortunate Proceedings, are thought by any to be an Argument for raising more Forces, we think it the Duty of all good Subjects, who wish well to his Majesty and our present happy Establishment, to use their best Endeavours for curing those Discontents, by removing or lessening the Occasions of them, and consequently, that there should not be an Augmentation of the Army, which is already sufficiently burdensome to the Subjects, both by the great Charge of maintaining them, and by the Uneasiness to the Places where they are quartered; because thereby the Charge to the Subject will be considerably increased. which as we apprehend, ought most carefully to be avoided in our Circumstances, when the Load of Taxes is already so very great, and the Kingdom involved in so immense a Debt, that nothing but the most prudent OEconomy and good Husbandry, can give us any probable Prospect of easing it: And therefore not being convinc'd of any real or just Ground for such Increase of Troops, do fear that this will not take away or lessen, but rather increase the Discontents and Disaffection of the People, and, in that respect, weaken his Majesty's Government, in a greater Degree than it will be strengthened by this Addition of Forces, allowing something for the Possibility of false Musters.

W. Ebor^s
 Poulet
 Uxbridge
 Aberdeen
 Oxford
 Scarfdale

Gower
 Trevor
 Compton
 Strafford
 Fr. Cestrien^s
 Hay

Cowper
 Osborn
 Litchfield
 Ashburnham
 Foley
 Montjoy.

Die Sabbati 9^{no} Martii 1722.

Complaint was made to the House, That, in the Deposition of one *Pancier* in the printed Report of the Committee of the House of Commons appointed to examine Mr. *Laver* and others, it is mentioned, that one *Skeene* told him, that the Lord *Strafford* and Lord *Knoul* were privy to Designs against the Government:

And it being thereupon moved, that those two Persons might be required to appear immediately at the Bar of this House, in order to their being examined,

The Question was put, Whether the said *Pancier* and *Skeene* should be immediately sent for to appear at the Bar of this House?

It was resolved in the Negative.

Not Content 64.

Content 29.

Dissoniens

1. Because the Earl of *Knoul* and the Earl of *Strafford* having severally complained to the House, that they found themselves reflected on in a printed Deposition of one *Andrew Pancier*, wherein he deposed, That one *Skeene* (now in Custody) had acquainted him, among other things, that the said Earls knew of the late Conspiracy, and were concerned in the Management of it here; and the said Earls alledging, that they did not see by the Report, in which that Deposition is found, that the said *Skeene*, tho' in the Hands of the Government, had been so much as questioned touching the said Hearsay; which Observation we find to be true, but we think it highly reasonable to have complied with the Motion and Request of the said Lords, that the said *Pancier* and *Skeene* might be examined at the Bar of this House in relation to that Matter only; the like Request for the clearing the Reputation of any noble Lord, when he hath thought himself unjustly aspersed, having never been denied, that we know of, but, on the contrary, it was not long since granted in the Case of the late Earl of *Sunderland*, tho' the Examination, which he thought reflected on his Honour, was not come into Print when he made his Complaint, which, according to our Judgment, was not so strong a Case for granting the Motion as the present is.

2. Because the said Deposition, as far as it is printed, contains nothing but what the Deponent heard another say (except as it contains a Charge on *Skeene* for saying) we think it was very natural and proper, as well for the Advancement of Justice, as for the Vindication of the noble Lords requesting it, to trace the said Hearsay, if possible, to the Fountain-head, or at least, so far as to know from the Person charged with relating it, whether he would deny his having related it; or, if not, whether he would confess the Falsity of what he had so related, or undertake to make it good by his own Testimony, or otherwise.

3. We think there could be no Inconvenience in examining, as moved, to find whether there was any, and what Foundation for this Hearsay, it not being an Anticipation of the Course of Justice (as examining a Part of the Evidence against any Man, or Part of an Accusation would be) since the swearing of what one Man said of a third Person is in no sort Evidence, either

either in Law or Reason, to support a Conviction, or even to ground an Accusation upon any Man whatsoever.

4. Since mere Hearsay, being no Evidence in the least Degree, cannot be made a Foundation for any legal Proceeding, it is impossible for any noble Lord, whose Honour may be affected by it, to clear himself in any Tryal, or other like Opportunity that can be given him to make his Defence: And therefore since there is no other Method, that we can think of, so proper or effectual, as the Examination of the Nature of that moved here, we think it ought to have been ordered, and that every noble Lord may possibly, in time, be hurt by the Consequence of this Precedent.

5. We cannot think, that the Examining, as moved for, into this Hearsay only, could have made any Difference with the other House, since it is inconceivable by us, that any Number of Gentlemen, who may have by Accident (for we hope it is no otherwise) in setting forth the Deposition of *Pancier* as a Charge against *Skeene*, happened to asperse the Reputation of some of the Peers of the Realm, could refuse, either that these Lords should desire, or the House permit them to clear themselves as soon, and as effectually as possible, of that Hearsay.

Strafford

Hay

Scarsdale

Comper

Franc. Cestrien

Oxbridge

Willoughby Br.

Osborn

Anglesey

Craven

Aylesford

Foley

Bristol

Guildford

Arundel

Berkely Sir.

Poulet

Weston

Litchfield

Bathurst

Bruce

Exeter

Compton

Bingley

House of Peers, March 15th 1722.

A Conference was had with the Commons about Matters of great Importance, relating to the Safety of his Majesty's Person, and the Preservation of our present happy Establishment both in Church and State.

And the Lord President reported, that the Commons, upon Consideration of a Report from a Committee appointed by them to examine Mr. *Laver* and others, being entirely satisfied of the detestable and horrid Conspiracy, had thought proper to communicate the said Report, together with the original Papers refer'd to therein, and did desire, upon Application, the same might, as Occasion required, be return'd to them, and his Lordship thereupon deliver'd in the said Report, together with the original Papers in a Trunk lock'd up.

Ordered, That the said Report and Original Papers be refer'd to a Committee of Nine Lords to be chosen by way of Ballotting, to morrow at Two a Clock; and that the said Trunk and Key be deliver'd to the Lord Chancellor, till the same be disposed of by Order of the House.

Ordered, That the Managers of the Conference be a Committee to prepare what may be fit to be offer'd to the Commons, by way of Answer, to so much of what was delivered to them at the said Conference, relating to the said original Papers.

Die

Die Jovis 21^{mo} Martii 1722.

THIS Day (upon a Complaint made by the Earl *Cowper*, of his Name being mention'd in the Report from the Secret Committee of the House of Commons) a Motion was made, That *John Plunket* be immediately sen for to the Bar of the House, to be examined.

After Debate, the Question being put upon the said Motion, It passed in the Negative.

Not Content 81.
Content 26.

Die Sabbati 23^{io} Martii 1722.

THIS Day the usual Protesting Lords entred their Protest against the Resolution of the House relating to sending for *Plunket* to be examin'd at the Bar of the House; and, for Reasons, referr'd to those in the Protest of *March 9*, relating to the sending for *Pancier* and *Skeene* to be examin'd.

Then the Earl of *Strafford* complained to the House, That his Name was printed in a pretend *List of the Conspirators* against his Majesty's Person and Government, inserted in a *Weekly Journal*, which was produced. Whereupon it was Order'd, &c. That the Gentleman Usher of the Black Rod do bring *J. Read* Printer in *White Fryars* to the Bar of this House, on *Tuesday* the 26th of *March 1723*, for printing in a Paper called, *The Weekly Journal, or British Gazetteer*, Sat. *March 23. 1723*, a List which is therein intituled, *A List of the Conspirators concern'd in the late Plot form'd against the King and Government, for setting the Pretender on the British Throne; with the fictitious Names that several of them went by, Alphabetically digested*: In which List the Earl of *Strafford's* Name is inserted.

Die Martis 26^{io} Martii 1723.

WHEREAS, by Order of this House, on *Saturday* last, the Gentleman Usher of the Black Rod was required to bring *J. Read* Printer in *White Fryars* to the Bar of this House, this Day, for printing in a Paper called, *The Weekly Journal, or British Gazetteer*, *Saturday, March 23. 1723*, a List which is therein intituled, *A List of the Conspirators concern'd in the late Plot form'd against the King and Government, for setting the Pretender on the British Throne; with the fictitious Names that several of them went by, Alphabetically digested*: In which List the Earl of *Strafford's* Name is inserted; and the Gentleman Usher of the Black Rod being now called upon to give an Account what he had done in Pursuance of the said Order, gave the House an Account, that he had made diligent Enquiry after the said *J. Read* at his House, and elsewhere, and that he abscends, and cannot be found: That his Wife did promise he should attend this House, this Morning; and the House having for some time expected him, and he not being come, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Gentleman Usher of the Black Rod do forthwith attach the Body of the said *J. Read*, for printing the said List, and

“ and keep him in safe Custody, till farther Order of this House, and this
 “ shall be a sufficient Warrant on that Behalf.

*To Sir William Sanderson, Bart. Gentleman Usher
 of the Black Rod attending this House, his Deputy
 or Deputies, and every of them.*

Die Veneris 29^{no} Martii 1723.

A Petition of *Francis* Lord Bishop of *Rochester* was presented and read, praying the Direction of the House as to his Conduct, in respect of a standing Order, prohibiting, on a Penalty, any Lord to appear by Council before the House of Commons, to answer any Accusation there.

Which said Order being read,

A Motion was made, and the Question being put, That the said Bishop, being a Lord of Parliament, ought not to answer, or make his Defence by Council, or otherwise, in the House of Commons, to any Bill or Accusation there depending.

It was resolved in the Negative.

Dissentient?

1. Because we conceive the permitting the Lord Bishop of *Rochester* to make his Defence in the House of Commons, would be directly contrary to the Words and Meaning of the standing Order of the House, bearing Date the 20th of *January* 1673; which expressly and clearly orders, *That for the future no Lord* (which extends to Lords Spiritual as well as Temporal) *shall go down to the House of Commons, or send his Answer in Writing, or appear by Council to answer any Accusation there:* And its observable, that this Order is worded absolutely, and not qualified by the Words (*without Leave of the House*) as the following standing Order of the 25th of *November* 1696, which prohibits Lords from going into the House of Commons while the House is sitting, is qualified. From which different Penning, as well as from the Preamble of the said first mentioned Order (which shews the Mischief designed to be prevented, was the giving Leave in Cases of Lords desiring it, to appear or answer Accusations in the House of Commons) we infer, that the said Order of *Jan.* 1673. was meant as a Rule for all future Times, that if Leave should be asked by a Lord of Parliament to answer, or make a Defence to an Accusation (in any Form, as we conceive) in the House of Commons, it ought to be denied, as deeply intrenching on the Privileges of this House.

2. The said standing Order, in Affirmance of which the Question was moved, ought to be of the greater Weight, in our Opinions, it having been founded on the Consideration and Report of a Committee (to whom it was particularly referred to consider the Practice of Lords desiring Leave to answer Accusations in the House of Commons) on the Perusal of Precedents in that Committee, and upon serious Consideration and Perusal of the same Precedents in the House it self.

3. We cannot apprehend, but that a Bill by which Crimes are charged, and a Preparation is made to inflict Pains and Penalties (if the Crimes are proved) contains very clearly an Accusation, especially when a Day is given, and Council allowed by the House of Commons to the Person against whom the Crimes are alledged, to make a Defence to the same; which Proceeding, tho' in the Legislative Capacity of that House, carries in it all the essential Parts of a Judicial Tryal: And we therefore conceive, that this House ought to be more jealous of their Members answering in the House of Commons,

an Accusation in this Form, rather than in any other, since thereby they submit themselves to try the Point of their being Guilty or Not Guilty in the House of Commons, and that in order to receive the Sentence and Judgment of that House, by passing or rejecting the Bill. And this, in our Opinions, more deeply intrenches (as the standing Order expresseth it) on the Privileges of this House, than a Lord going down to the House of Commons, during a Debate there, to prevent an Impeachment, doth; the latter being only to prevent an Accusation, but the former is (as we clearly conceive) to answer an Accusation there, the very thing prohibited by the standing Order.

4. We think the Accusation which Lords are prohibited to answer by this standing Order, must be chiefly, if not only, understood of an Accusation couched in a Bill (as in the present Case) since we never heard that any Lord of Parliament did, at any time, answer to, or defend in Person, or by Council, an Impeachment in the House of Commons, tho' they may have gone down to that House, by Connivance, to prevent such Impeachment: And therefore Lords defending themselves in the House of Commons against an Impeachment, could not be the Mischief intended to be cured by the said standing Order.

5. That the House of Commons, on Bills to inflict Penalties, do proceed, strictly speaking, in their Legislative Capacity, is certainly true; and yet it is plain to us, that, in Reality, they partake in such Cases with the House of Lords in the Judicature; or, which is all one, in trying and adjudging Offenders to Punishment. And tho' the Lords should, in very extraordinary Cases, think fit to concur in such a Method of punishing; yet it is, in our Opinions, going by much too far, for the Lords to permit any of their Body to make Defence in the House of Commons, either by himself or Council, which is letting themselves down to a very great Degree, and giving an unnecessary Encouragement to that Manner of Proceeding: And when Lords have so far submitted to this Course, we think there is little Reason to expect, that afterwards the Commons will ever appear at the Lords Bar as Accusers, when they can by this way make themselves as much Judges, even over Lords, as in this Proceeding by Bill the Lords themselves are.

6. Tho' Lords, by not being permitted to appear either in Person, or by Council, to defend themselves in the House of Commons, may be thought possible to lose some Advantage in their Defence; yet we think it was, and is the true Meaning of the standing Order first mentioned, That a Lord should rather suffer something of Inconvenience in that Particular, and commit his Cause to God and the Justice of the House of which he is a Member, and who are his proper Judges, than in any Degree debase or derogate from the legal State and Dignity of the Lords in general.

7. Altho' there be, as we conceive, a very manifest and important Difference in Reason, as to the Matter of this Question, between the Case of Bishops (who are declared by the standing Order of *May 23, 1628*, to be only Lords of Parliament, and not Peers, for they are not of Tryal by Nobility) and that of Peers of the Realm, who undoubtedly, for Matters of Treason and Felony, are triable by their Peers only: Yet since, by the standing Order first mentioned, Bishops are as much, and as clearly prohibited to answer any Accusation in the House of Commons, as the Peers, or the Lords Temporal are, we cannot but apprehend, with the deepest Concern, that this Case may be used hereafter as a Precedent (tho', as we take it, far from being a Precedent in Point) to bring by Degrees, the Peers of the Realm to defend themselves against Accusations of the like Nature in the House of Commons; which, if once brought to a Practice, we are of Opinion, that the Peers of the Realm would, in great measure, be degraded from their Peerage, and so, by weakning and debasing the Order of Nobility, which, in its Institution, was meant, or at least hath proved, a Lustre and Security to the Crown, the Safety, as well as Dignity of the Crown it self, may be hereafter in a great Degree impaired.

Scarsdale
Gower
Trevor
Bruce
Ashburnham
Foley
Aylesford

Compton
Arundel
Strafford
Bingley
Dartmouth
Cowper
Bathurst

Litchfield
Weston
Guilford
Poulet
Hay
Uxbridge
Montjoy.

Die Veneris 5^{to} Aprilis 1723.

A Petition of the Lord Bishop of *Rocheſter* was preſented and read, complaining, That Colonel *Williamſon*, aſſiſted by Perſons under his Authority, did, by Violence, ſearch the Petitioner, and carry away two Seals, and alſo ſeized a Paper in his Pocket, being a Letter to his Sollicitor, which he took again from them, and tore, but they carried a Part of it along with them, and did alſo ſearch the Petitioner's two Servants, and took away a Seal from one of them: And praying Relief and Protection.

And thereupon a Motion being made, and the Queſtion being put, That Colonel *Williamſon*, the Deputy Lieutenant of the *Tower*, Mr. Serjeant, the Gentleman Porter, the two Warders who attended the Colonel yeſterday in the Apartment of the Biſhop, and the two Servants attending his Lordſhip there, do attend at the Bar of this Houſe, to give an Account of the Matters contained in the ſaid Petition:

It was reſolved in the Negative.

Dissentient

1. Becauſe the Petitioner, as a Lord of Parliament, and Member of this Houſe, tho' no Peer of the Realm, hath an unqueſtionable Right, under all Circumſtances, to the Juſtice and Protection of this Houſe, againſt any Perſons whatſoever, who, during the Sitting of Parliament, commit any Act of Violence to his Perſon or Property, which this Houſe may judge to be a Breach of his Privilege: And therefore, as we conceive the Facts alledged in the Petition, if the ſame are true, and no Account given of them by the Perſons concerned, to the Satisfaction of this Houſe, are an unwarrantable Attempt upon a Member of this Houſe: We think, that, in Juſtice to the Petitioner, and to the Honour and Privileges of this Houſe, there ought to have been an immediate and impartial Examination by this Houſe, of the Perſons concerned; we finding no Inſtance on the Journals of this Houſe, where any Member of the Houſe has complained, by Petition, or otherwiſe, of the leaſt Violence or Injury to his Perſon, during the Time of Privilege, whereon this Houſe hath not ordered an Examination of the Facts complained of.

2. Becauſe it appears to us, that the Petitioner being under Imprisonment, and a Bill depending againſt him in the Houſe of Commons, that Houſe having allowed him the Benefit of Council and Sollicitors for making his Defence, were proceeding againſt the Petitioner on that Bill, in all Probability, at the very Time the Matters complained of were tranſacted: And as that Bill may ſoon come under the Conſideration and Judgment of this Houſe, the ſeizing the Petitioner's Letter to his Sollicitor, or any thing that may concern his Defence, we are of Opinion, ought to be examined into, it being, as we conceive, againſt the Rules of natural Juſtice, the Laws of all Nations, and the known and fundamental Laws of this Realm, that any Papers, or other things, in the lawful Poſſeſſion of the Perſon ſo accuſed, and which may relate to his Defence, ſhould be forcibly wreſted from him, and that

that any Person, more especially a Lord of Parliament, being under Imprisonment and Accusation for High Treason, should, by Terror, or other Violence be, without just Cause, in any Degree, disturbed in, or disabled from making his Defence.

3. Because the refusing to enter into the Examination of the Matters complained of by the Petition, may, in our Opinions, be construed to be a Justification of the Proceedings therein alledged, even tho' there was not a reasonable Occasion for the same; and it being suggested in the Petition, that the Deputy Lieutenant of the *Tower* did affirm to the Petitioner upon his Salvation, That he had a verbal Order from the Ministry, tho' he refused to say from whom, and not pretending that what he did was by his own Authority; we are of Opinion, that it was of the greatest Consequence to the Honour of his Majesty's Government, that this House should have examined into this Proceeding; and the rather, because we conceive it to be of the highest Importance to the free and impartial Administration of Justice, that this House should, on all Occasions, discountenance all Appearances of Force, especially on a Lord of Parliament imprisoned and accused of High Treason.

Because we think, That if an unjustifiable Violence be offered to the Person or Privilege of any Member of this House, and not examined into, it may prove an Encouragement to commit the like, if not farther Abuses, on any other Member of this House in future Times.

Strafford
Bathurst
Lechmere
Weston
Bingley

Cowper
Hay
Poulet
Ashburnham
Bruce

Scarsdale
Guilford
Foley
Litchfield
Montjoy.

Die Veneris 26^{to} Aprilis 1723.

John Plunket being brought to the Bar, objected to the Second Reading of the Bill *To inflict Pains and Penalties* on him, in this House, having never been heard against the said Bill in the House of Commons, but was acquainted by the Lord Chancellor, this was not the proper Time to object to the Bill.

Mr. *Reeves* and Mr. *Werge* were heard for the Bill, who opened the Evidence, and produced Extracts of several original Letters from abroad, relating to the Conspiracy, to prove the first Part of the Preamble of the Bill.

And the Prisoner objected to the reading the said Extracts. Being withdrawn, after Debate it was moved, " That the Opinion of the Judges be ask'd, whether Extracts out of Letters written by the King's Ministers abroad, and others to the Secretaries of State here, attested by the Secretary of State, and examined by the Lords of the Committee, and found to agree with the Originals, which Originals are yet extant, and remain in the Hands of the Secretary of State, but contain Particulars which 'tis not consistent with the Safety of the Publick to divulge, as hath been affirmed to this House by two Secretaries of State: And the Lords Committees offered to be produced, to prove the first Part of the Preamble of the Bill, which recites a detestable Conspiracy for the Purposes in the Bill; could be allowed to be read as Evidence in the Courts below, in any Prosecution against *Plunket* ?

And a Question being stated thereupon, and put,
It was resolved in the Negative.

Dissentient?

Dissentient

Cardigan	Lechmere	Bathurst
Anglesey	Uxbridge	Foley
Guilford	Poulet	Compton
Scarsdale	Litchfield	Weston
Bruce	Fr. Cestrien	Willoughby Br.
Craven	Brook	Dartmouth
Aylesford	Exeter	Masham.
Gower	Berkeley de Str.	

Then a Motion was made, and the Question was put, Whether the said Extracts shall be read in Proof of the Allegations of the Preamble of the said Bill? And

It was resolved in the Affirmative.

Content 91.
Not Content 29.

Dissentient

Strafford	Lechmere	Weston
Scarsdale	Fr. Cestrien	Gower
Craven	Berkeley de Str.	Compton
Aylesford	Bathurst	Brook
Bruce	Anglesey	Masham
Cardigan	Litchfield	Dartmouth
Uxbridge	Foley	Willoughby de Br.
Poulet	Guilford	Exeter.

It was proposed, That the Examination of Philip Neynoe, since dead, be read in Proof of the Conspiracy in general:

And a Question being stated thereupon, it was proposed to add these Words, viz. [but not taken upon Oath, nor signed by him.]

After Debate, the Question was put, Whether these Words shall be made Part of the Question?

It was resolved in the Negative.

Not Content 87.
Content 29.

Dissentient

Strafford	Foley	Weston
Scarsdale	Craven	Willoughby de Br.
Cardigan	Brook	Fr. Cestrien
Anglesey	Litchfield	Exeter
Aylesford	Dartmouth	Masham
Bruce	Compton	Uxbridge.
Gower	Poulet	

Then the Question was put, Whether the Examination of Philip Neynoe, since dead, shall be read in Proof of the Conspiracy in general?

It was resolved in the Affirmative.

Dissentient

Scarsdale	Brook	Poulet
Gower	Foley	Compton
Anglesey	Bruce	Masham
Cardigan	Willoughby de Br.	Frans. Cestrien
Strafford	Exeter	Uxbridge
Dartmouth	Litchfield	Craven.
Aylesford	Weston	

F

Then

Then the Council produced several Evidences, which were examined, and also Copies of three Letters stopt at the Post-Office,

And several Witnesses were examined against the Bill, and *Plunket* and his Solicitor also.

Adjourn'd to To-morrow Ten o' Clock.

Die Lunæ 29^{no} Aprilis 1723.

Hodie *tertia vice lecta est Billa, entituled, An Act to inflict Pains and Penalties on John Plunket.*

The Question being put, Whether this Bill shall pass?
It was resolved in the Affirmative.

Dissentient

1. Because Bills of this Nature, as we conceive, ought not to pass but in Case of evident Necessity, when the Preservation of the State plainly requires it; which we take to be very far from the present Case, the Conspiracy having been detected so long since, and the Person accused seeming to us very inconsiderable in all respects, and who from the many gross Untruths it now appears he has wrote to his Correspondents abroad, must appear to have been an Impostor and Deceiver, even to his own Party.

2. Proceedings of this kind, tending to convict and punish, are, in their Nature, tho' not Form, judicial, and do let the Commons, in Effect, into an equal Share with the Lords in Judicature, which the Lords ought to be very jealous of doing, since the Power of Judicature is the greatest distinguishing Power the Lords have; and there will be little Reason to hope, that if Bills of this Nature are given way to by the Lords, the Commons will ever bring up Impeachments, or make themselves Accusers only, when they can act as Judges.

3. This Bill, in our Opinion, differs materially from the Precedents cited for it. As to the Case of Sir *John Fenwick*, 'tis plain by the Preamble of that Bill, that the Ground most relied on to justify Proceeding against him in that manner was, that there had been two legal Witnesses to prove the High Treason against him: That a Bill was found against him on their Evidence, and several Times appointed him for a legal Tryal thereon, in the ordinary Course, which he procured to be put off, by undertaking to discover, till one of the Evidences withdrew; so that 'twas solely his own Fault that he had not a legal Tryal by a Jury. All which Circumstances not being in the present Case, we take it, they are not at all to be compared to one another.

4. As to the Acts which passed to detain *Counter* and others concerned in the Conspiracy to assassinate the late King *William*, of glorious Memory, we conceive those Acts were not, in their Nature, Bills of Attainder as this is, but purely to enable the Crown to keep them in Prison, notwithstanding the Laws of Liberty; whereas this is a Bill to inflict Pains and Penalties, and does import a Conviction and Sentence on the Prisoner, not only to lose his Liberty, but also all his Lands and Tenements, Goods and Chattels, of which he having none, as we believe, we cannot apprehend why it was inserted, and this Bill not drawn on the Plan of *Counter's*, &c. unless it was to make a Precedent for such Forfeitures, in Cases of Bills which may hereafter be brought to convict Persons who have great Estates, upon Evidence which does not come up to what the Law in Being requires.

5. If there be a Defect of legal Evidence to prove this Man guilty of High Treason, such Defect always was; and we think, if Bills of this Nature, brought to supply original Defects in Evidence, do receive Countenance,

nance, they may become familiar, and then many an innocent Person may be reach'd by them, since 'tis hard to distinguish whether that Defect proceeds from the Cunning and Artifice, or from the Innocence of the Party.

6. This Proceeding by Bill does not, in our Opinion, only tend to lay aside the judicial Power of the Lords, but even the Use of Juries, which distinguishes this Nation from all its Neighbours, and is of the highest Value to all who rightly understand the Security and other Benefits accruing from it; and whatever tends to alter or weaken that great Privilege, we think is an Alteration of our Constitution for the worse, tho' it be done by Act of Parliament: And if it may be supposed, that any of our fundamental Laws were set aside by Act of Parliament, the Nation, we apprehend, would not be at all the more comforted from the Consideration that the Parliament did it.

7. It is of the Essence of natural Justice, as we think, but it is most surely of the Laws of the Realm, that no Person should be tryed more than once for the same Crime, or twice put in Peril of losing his Life, Liberty or Estate. And tho' we acquiesce in the Opinion of the Judges, that if this Bill pass into a Law, *Plunket* cannot be again prosecuted for the Crimes contained in the Preamble of the Bill; yet it is certain, that if a Bill of this kind should happen to be rejected by either House of Parliament, or by the King, the Person accused might be attacked again and again in like manner, in any subsequent Session of Parliament, or indicted for the same Offence, notwithstanding that either House of Parliament should have found him innocent, and not passed the Bill for that Reason. And we conceive it a very great Exception to this Course of Proceeding, that a Subject may be condemned and punished, but not acquitted by it.

8. We think it appears in all our History, that the passing Bills of Attainder, as this, we think, in its Nature is, (except, as before is said, in Cases of absolute and clear Necessity) have proved so many Blemishes to the Reigns in which they passed; and therefore we thought it our Duty in Time, and before the passing this Bill as a Precedent, to give our Advice and Votes against the passing it, being very unwilling that any thing should pass, which, in our Opinions would, in the least, derogate from the Glory of this Reign.

9. We apprehend it to be more for the Interest and Security of his Majesty's Government, that Bills of this Nature should not pass, than that they should, since Persons, who think at all, cannot but observe, that in this Case some things have been received as Evidence, which would not have been received in any Court of Judicature; that Precedents of this kind are naturally growing (as we think this goes beyond any other which has happened since the Revolution) and if from such like Observations they shall infer, as we cannot but do, that the Liberty and Property of the Subject becomes, by such Examples, in any Degree, more precarious than they were before; it may cause an Abatement of Zeal for a Government founded on the Revolution, which cannot, as we think, be compensated by any the good Consequences which are hoped for by those who approve this Bill.

Scarsdale

Strafford

Aylesford

Weston

Masham

Cardigan

Osborn

Willoughby de Br.

Poulet

Bathurst

Guilford

Dartmouth

Lechmere

Compton

Trevor

Berkeley de Str.

Cowper

Gower

Bruce

Hay

Brook

Exeter

Foley

Craven

Anglesey

Litchfield

Ashburnham

Uxbridge

Bingley

Fr. Cestrien

Oxford.

Die

Die Jovis 2^{do} Maii 1723.

THE Question was put, That the Council for the Prisoner may be at Liberty to proceed, as they desired, to examine Witnesses to prove, by several Circumstances, that the Letters dated *April 20, 1722*, given in Evidence for the Bill, were not dictated by the Bishop of *Rocheſter* to the Prisoner *George Kelly*.

It was resolved in the Negative.

Diffonient

1. Because it was insisted on by the Prisoner's Council, That the Proof desired was necessary to his Defence, and, if allow'd to be made, would contribute to satisfy the House of the Prisoner's Innocence of the Crimes charged on him by the Bill; for which Reason alone, if there was no other, we think the Witnesses ought to have been examined, it being, in our Opinions, against the constant Course and Rules of Justice, in criminal Proceedings of all kinds, to preclude the Prisoner's Defence, by refusing to hear his Witnesses, if they are legal and competent; and in Derogation of the Honour and Justice of the House, on this Occasion, to anticipate the Judgment of the House in the least Circumstance which the Prisoner, or his Council, insist on to be material to his Defence, and which may, if proved, be of Weight in the Consideration and Judgment of the House.

2. It appears to us, to tend directly to prove the Guilt or Innocence of the Prisoner, to discover whether the Bishop of *Rocheſter* did dictate to the Prisoner the Letters mentioned in the Question, because it was declared to the House by the Council for the Bill, in opening the Charge against the Prisoner, that the Letters, tho' wrote by the Prisoner, were dictated to him by a greater Person: And altho' the Council for the Bill, when called upon, did not think fit to name that greater Person; yet it being suggested in the Report of the House of Commons communicated to this House, and it being universally supposed hitherto, that the Bishop of *Rocheſter* did dictate the said Letters to the Prisoner, it became, in our Opinions, incumbent on the Prisoner to give the House what Satisfaction he could in that Particular; the same being made a Circumstance, and Part of the Accusation against him, and, if falsified, or rendred incredible, might influence the Judgment of the House in other Circumstances.

3. Because the Declaration of *Philip Neynoe* deceased, tho' not signed or sworn to by him, hath been allowed by the House to be read and given in Evidence, in Proof of the particular Facts charged on the Prisoner in the Bill; in which Declaration the Prisoner is expressly charged by the said *Neynoe*, to have frequently told him, that the Bishop of *Rocheſter* held Correspondencies with the *Pretender*, and the *Pretender's* Agents; and that the Prisoner was employed by the Bishop in writing for him, and carrying on the said Correspondencies, and that he had several times left Mr. *Kelly* at the Bishop's Door, when Mr. *Kelly* went into the Bishop's House, and stayed there an Hour or two, and, upon coming back to him, that the Prisoner made Apologies for staying so long, and told him, *he had been writing the Bishop's Letters*, which he always apprehended to be the foreign Correspondence of the Bishop with the *Pretender's* Agents: For which Reason also we conceive the Proof desired ought to have been received, because it may be thought a Denial of Justice by this House to the Prisoner, not to permit him to answer, even by legal Evidence, the particular and direct Evidence which the House hath allowed to be given against him.

4. Altho' the Prisoner may be guilty of a treasonable Correspondence, if he wrote the Letters mentioned in the Question, and the same were not dictated to him by any Person whatsoever; yet the Facts charged in the Bill having

ving been endeavoured to be proved, not by direct Proofs of the Facts themselves, but by Circumstances, in our Opinions, the Prisoner's Defence must be applied to answer the several Circumstances; and it is, as we conceive, equally unjust to deny him the Liberty of falsifying that Circumstance, of his writing the Letters being dictated to him by the Bishop, as it would be to refuse to allow him to prove that the said Letters were not, or could not be wrote or sent to the Persons to whom they are suggested or charged to have been wrote or sent, or to refuse him to prove by Circumstances, that the Prisoner himself did not, or could not write the same at the particular Times and Places the same are suggested to be so wrote or sent by him, or to deny him Liberty to falsify, by Circumstances, any other Circumstance relating to the supposed treasonable Correspondence charged on him by the Bill.

5. The Council for the Bill having alledged, as one Reason, against the Examination desired, That they were not prepared to answer that Evidence, might have been a Ground for the House to have allowed them a reasonable Time for such Preparation; but, in our Opinions, that Consideration ought not to weigh against the Prisoner giving the Evidence to the House which he was prepared to give, especially since it was alledged, that the Examination now desired, was desired on the Prisoner's Part to have been made at the Bar of the House of Commons, and thereby so long ago publicly notified by the Prisoner.

6. Because the Refusal of the Proof of any Circumstance of the Prisoner's Defence, if such Refusal be not just, must, in its Consequence, affect the Justice of this whole Proceeding against the Prisoner; because it deprives the House of the Liberty of forming a Judgment upon the whole Case, and tends, so far as that Particular goes, to subject this Proceeding against the Prisoner to the Objection of Partiality, which is most highly dishonourable to this House, especially considering the Latitude which hath been allowed in other Parts of the Examination, on this Occasion.

Arundel
Pomfret
Northampton
Craven
Wharton
Cowper
Fr. Cestrien
Foley
Montjoy
Leigh
Berkeley de Str.
Middleton
Salisbury
Hay

Strafford
Scarsdale
Stawell
Bathurst
Trevor
Masham
Willoughby de Br.
Brook
Weston
Ashburnham
Gower
Poulet
Guilford
Denbigh

Litchfield
Anglesey
Cardigan
Osborn
Compton
Bruce
Lechmere
Dartmouth
Bingley
Aylesford
Uxbridge
Tadcaster
Exeter.

Die Veneris 3^{to} Maii 1723.

Hodie tertia vice lecta est Billa, entituled, *An Act to inflict Pains and Penalties on George Kelly, alias Johnson.*

A Rider was offered to be added to the said Bill, which was read by the Clerk, as follows, viz.

“ Provided always, That if the said *George Kelly, alias Johnson*, shall, at any Time, give Security, such as shall be approved of by the two Chief Justices, that he will within one Month depart his Majesty's Dominions,

G

“ and

“ and not return again without the Licence of his Majesty, his Heirs and
 “ Successors, then the said *George Kelly*, alias *Johnson*, shall be at Liberty to
 “ depart, any thing in this Act to the contrary notwithstanding.

And a Motion being made, and the Question put, Whether the said Ri-
 der shall be read a Second Time?

It was resolved in the Negative.

Dissentient

<i>Osborn</i>	<i>Strafford</i>	<i>Foley</i>
<i>Anglesey</i>	<i>Aylesford</i>	<i>Exeter</i>
<i>Craven</i>	<i>Salisbury</i>	<i>Berkeley de Str.</i>
<i>Guilford</i>	<i>Poulet</i>	<i>Compton</i>
<i>Stawell</i>	<i>Bruce</i>	<i>Uxbridge</i>
<i>Northampton</i>	<i>Ashburnham</i>	<i>Arundel</i>
<i>Middleton</i>	<i>Dartmouth</i>	<i>Cardigan</i>
<i>Gower</i>	<i>Masbarn</i>	<i>Montjoy</i>
<i>Fr. Cestrien</i>	<i>Weston</i>	<i>Willoughby Br.</i>
<i>Scarsdale</i>	<i>Hay</i>	<i>Bingley.</i>
<i>Trevel</i>	<i>Brook</i>	
<i>Bathurst</i>	<i>Litchfield</i>	

Then the Question was put, Whether this Bill shall pass?
 It was resolved in the Affirmative.

Dissentient

1. Because we think there is no Room for the Legislature to pass a Law
Ex post facto, to punish this Person for the treasonable Correspondence he is
 accused of, he being in Custody, and may be brought to a legal Tryal in one
 of the Courts of Justice.

2. We conceive, the Want or Defect of such clear and plain Evidence as
 by the Laws of this Kingdom is required to convict any Person of *High*
Treason, no sufficient Reason to warrant the Exercise of the Legislative Power
 in making a new Law for his Punishment, because such Laws being made
 for the Protection of innocent Persons, from suffering by false, uncertain, or
 doubtful Evidence, every Subject is entitled to the Benefit of those Laws,
 when he shall fall under an Accusation of *High Treason*.

3. Because we conceive, by the Rules of natural Justice, Laws ought to
 be first made as Directions for Men's Actions and Obedience, and Punishment
 inflicted, for putting those Laws in Execution against Offenders: And that
 therefore punishing by a Law made after the Offence committed, is not agree-
 able to Reason or Justice, except only in the Case of real and apparent Ne-
 cessity, to prevent the immediate Ruin of a Government, which we do not
 think can be the present Case, or can bear any Resemblance to it.

4. Because the Proceedings of the Legislative Power, in making Laws, can
 be governed by no Rule but that of their own Discretion and Pleasure:
 And therefore the making Laws, to inflict Pains and Penalties on particular
 Persons, must, as we conceive, tend to expose the Liberties and Properties
 of the Subjects to an arbitrary Discretion; and consequently render them
 precarious in the Enjoyment of those Blessings, which, by our excellent
 Constitution and Government, they have always had an uncontrollable Right
 to hold and enjoy, till forfeited for some Crime, and the Person offending
 legally convicted thereof, upon such full and positive Proof as the Laws of
 this Kingdom do require.

5. Because, as we conceive, it would be of dangerous Consequence to the
 Safety of innocent Persons, to allow Copies of Letters taken by the Clerks
 of the Post-Office, tho' sworn by them to be true Copies, to be given in
 Evidence against any Person accused of *High Treason*, especially when such
 Copies

Copies are not compared with the Originals after they are taken, and the Originals forwarded on by them, and not produced; because, the Originals not being produced, such Person is deprived of an Opportunity of falsifying those Copies, and tho' there should be any Mistake committed by the Clerk in Copying, whether wilfully, or by Negligence, such Mistake cannot be detected for want of the original Writings to compare the Copies with.

6. Because the Proof of Letters or other Writing in criminal Prosecutions, by Similitude and Comparison of Hands, being, as we conceive, a very slight and weak Evidence (because Hands may be too easily counterfeited, and the Persons examined cannot speak positively, but to their Belief, and therefore not liable to be prosecuted for Perjury;) hath, as we conceive, very justly, been discouraged in such Times when the Administration of Justice hath been most impartial; and Convictions of High Treason grounded on such Evidence have been reversed by Act of Parliament, for that and other Reasons.

<i>Pomfret</i>	<i>Aylesford</i>	<i>Trevor</i>
<i>Stawell</i>	<i>Dartmouth</i>	<i>Uxbridge</i>
<i>Northampton</i>	<i>Bathurst</i>	<i>Foley</i>
<i>Fr. Cestrien</i>	<i>Litchfield</i>	<i>Masham</i>
<i>Anglesey</i>	<i>Salisbury</i>	<i>Cardigan</i>
<i>Strafford</i>	<i>Brook</i>	<i>Arundel</i>
<i>Scarsdale</i>	<i>Gower</i>	<i>Exeter</i>
<i>Craven</i>	<i>Weston</i>	<i>Montjoy</i>
<i>Denbigh</i>	<i>Osborn</i>	<i>Willoughby de Br.</i>
<i>Guilford</i>	<i>Hay</i>	<i>Ashburnham</i>
<i>Wharton</i>	<i>Berkeley de Str.</i>	<i>Bingley</i>
<i>Middleton</i>	<i>Compton</i>	<i>Tadcaster.</i>
<i>Poulet</i>	<i>Bruce</i>	

Die Lunæ 6^{to} Maii 1723.

A Motion was made, and the Question put, That the Extract offer'd by the Council for the Bill, of the Letter from Sir *Luke Schaub* to the Lord *Carteret*, be read in Evidence.

It was resolved in the Affirmative.

Then a Motion was made, and the Question put, Whether the Advice inclosed from Sir *Luke Schaub* be read, tho' this House be not acquainted with the Name of the Person who gave that Advice?

It was resolved in the Affirmative.

Dissentient

<i>Strafford</i>	<i>Masham</i>	<i>Foley</i>
<i>Osborn</i>	<i>Anglesey</i>	<i>Exeter</i>
<i>Craven</i>	<i>Cowper</i>	<i>Montjoy</i>
<i>Salisbury</i>	<i>Brook</i>	<i>Weston</i>
<i>Northampton</i>	<i>Litchfield</i>	<i>Willoughby de Br.</i>
<i>Scarsdale</i>	<i>Bruce</i>	<i>Compton</i>
<i>Aylesford</i>	<i>Denbigh</i>	<i>Cardigan</i>
<i>Gower</i>	<i>Guilford</i>	<i>Bingley</i>
<i>Poulet</i>	<i>Dartmouth</i>	<i>Ashburnham</i>
<i>Fr. Cestrien</i>	<i>Trevor</i>	<i>Berkeley de Str.</i>

A Motion was made, and the Question put, That *Willes* be obliged to produce his Key of the Cypher.

It

It was resolved in the Negative.

Dissentient

Northampton
Salisbury
Strafford
Scarsdale
Poulet
Franc. Cestrien
Comper
Wharton
Brook
Bruce
Cardigan

Trevor
Guilford
Aylesford
Gower
Oxford
Masham
Foley
Anglesey
Litchfield
Exeter
Dartmouth

Osborn
Montjoy
Berkeley de Str.
Weston
Willoughby de Br.
Bingley
Compton
Denbigh
Ashburnham
Craven.

Die Martis 7^{mo} Maii 1723.

THE Question was put, That it is the Opinion of this House, that it is inconsistent with the publick Safety, as well as unnecessary for the Prisoner's Defence, to suffer any farther Inquiry to be made upon this Occasion, into the Warrants which have been granted by the Secretary of State, for the stopping and opening of Letters which should come or go by the Post, or into the Methods that have been taken by the proper Officers at the Post-Office, in Obedience to such Warrants.

It was resolved in the Affirmative.

Content 82.

Not Content 49.

Dissentient

1. Because we apprehend, that, in all criminal Prosecutions, the Cross-examining of Witnesses is necessary for the Defence of the Prisoner, and for the Satisfaction of those who are to judge of the Facts alledged against him, in order to the discovering of Truth, and detecting any fraudulent Evidence which should be offer'd; and the Resolution above recited does, in our Opinions, debar the Bishop of *Rocheſter*, and every other Person concerned, from asking any Questions of the Clerks of the Post-Office, who are brought as Witnesses to the Bar, relating to the stopping and opening of Post-Letters, tho' Letters pretended to be stopt and opened at the Post-Office are read as Evidence against the Prisoner. And we conceive, that the preventing any further Enquiry on these Heads, must lay this House under great Difficulties, when they come to form a Judgment on those Letters, the Validity of which will, in a great measure, depend on the Proof given of their having been truly stopt and opened, as asserted.

2. We apprehend it to be impossible for this House to determine, that the Enquiry which is desired is unnecessary to the Defence of the Prisoner, till he shall come to make his Application; and we conceive he should have the Liberty of asking what Questions he or his Council think proper, of the Clerks of the Post-Office, relating to the stopping and opening of Letters, without acquainting the House what Use he intends to make of their Answers: And this appears to us to be highly reasonable, essential to Justice, and warranted by the Methods which this House hath hitherto allowed the Council for the Support of the Bill to proceed in, who have, during the whole Course of this Examination, reserved the Application of the Evidence they have offer'd, till they should judge convenient to make it.

Scar-

Scarsdale
Trevor
Compton
Weston
Uxbridge
Gower
Strafford
Foley
Pomfret
Brook

Wharton
Craven
Northampton
Bingley
Willoughby de Br.
Exeter
Ashburnham
Hay
Denbigh
Poulet

Masham
Aylesford
Bathurst
Litchfield
Osborn
Bruce
Cardigan
Anglesey.

Die Sabbati 11^{mo} Maii 1723.

A Motion was made, and the Question was put, That *George Kelly*, alias *Johnson*, now a Prisoner in the *Tower of London*, be brought to the Bar of this House, on *Monday Morning* next, to be examined upon Oath, on the Bill entituled, *An Act to inflict Pains and Penalties on Francis Lord Bishop of Rochester*?

It was resolved in the Negative.

Dissentient

1. Because we think it unquestionable, that the said *Kelly* is a competent legal Witness to the Matters charged by the Bill against the Bishop, and could not be legally refused to be sworn as such, if the Bishop were on his Tryal for the same in the ordinary Course of Justice; and that, whether the said *Kelly* was produced for or against the Bishop. And we conceive, that if the Council for the Bill had thought fit to have produced him in Support of the Bill, that even no legal Objection could have been made by the Bishop's Council against his being so produced and sworn; the Bill pass'd this House against the said *Kelly* not having received the Royal Assent, and there not being in the said Bill, in our Opinions, any thing that can destroy even his legal Testimony, when the same is pass'd into a Law.

2. Because the three Letters dated *April 20, 1722*, supposed to contain treasonable Correspondencies with the Pretender and some of his Agents, have been made the principal Charge against the Bishop, and have been endeavoured to be proved to have been dictated to the said *Kelly* by the Bishop, at or about the Time of their Date; but this not being as yet done, as we think, by direct or positive Proof, by any living Witness of the Fact, but by Circumstances only, we think it most proper, and most safe and just, to endeavour to discover the Truth of that material Fact by the best Evidence the Nature of the thing can admit of; and that this House should not be left under the Difficulties of judging on this extraordinary Occasion, from doubtful Circumstances, if the Fact may be clear'd by certain positive Proof, and the Examination of a competent and a living Witness upon Oath, at the Bar of this House.

3. Because several living Witnesses have been examined on Oath, at the Bar of this House, on Behalf of the Bishop, in order to prove by their positive Testimony, and other Circumstances, that the Bishop did not dictate or direct, or was any way privy to the writing the said Letters, or any of them, which has, in our Judgments, render'd it yet of greater Importance, that the supposed Writer of those Letters should be brought under the most strict and solemn Examination, before the Bill has passed this House.

4. Because the said *Kelly*, tho' examined before Committees of both Houses of Parliament, and elsewhere, hath not, to our Knowledge, been yet

examined on Oath to the Matters contained in this Bill; and it having appeared to us, in other Instances on this Occasion, particularly of *Mrs. Barnes* examined for the Bill, and of *Bingley* against it, who have materially varied their Examinations at the Bar of this House, from their former Examinations, at the same time declaring that their former Examinations were not taken and sworn to by them; we think it may be both dangerous and derogatory to the Honour and Justice of the House, not to examine on Oath a Person capable of discovering the Matters of Fact, on which the Justice of the Bill against the Bishop must depend, and especially after the said *Kelly* hath declared in the most solemn manner, next to that of his being upon Oath, that the Bishop did not dictate, or was privy to the writing of the said Letters; or any of them; and the Bishop himself, in his Defence, having also, in the most solemn manner of Affirmation, declared his Innocence in this Particular, and expressly referring to the former Affirmations of the said *Kelly*, as we conceive, as a Testimony in Confirmation of his own Affirmations.

5. Because we conceive, that the said *Kelly* was not only a legal Witness for or against the Bishop, in the strictest Construction of Courts of Judicature, but the Examination of him upon Oath in this Bill, is, in every respect whatsoever, in our Judgments, less liable to Objection than many, and most other Evidences which on this Occasion have been allowed; because the Bill pass'd by this House against the said *Kelly*, if it obtains the Royal Assent, as is most probable, doth, in Judgment of Law, as hath been declared by the Judges, acquit him of any future Prosecution for the said Treasons therein charged upon him: And there is no Judgment or Punishment inflicted upon him in the said Bill, which can, when pass'd, destroy his Capacity of giving Evidence on any Occasion; and the same having passed this House, and not passed the Royal Assent, leaves the said *Kelly*, in our Opinions, under less Influence either of Hopes or Fears, than such Witnesses which have been examined on this Occasion, under Commitments and Charge of High Treason, and, as we conceive, less liable to that Objection than the Declaration of *Philip Neynoe*, which has been read against the Bishop, tho' never signed or sworn to by him, and the said *Neynoe* some Months since drown'd in endeavouring his Escape, and which Declaration appears to us to have been made by him under the strongest Influences of Guilt and Terror.

6. We think the Crimes charged in the Bill against the said *Kelly*, are, in their Nature, distinct and independent on those charged on the Bishop, *Kelly's* Guilt in writing the said treasonable Letters proved upon him, being the same, altho' the Bishop be altogether innocent in relation thereto, for which, as we conceive, this House did refuse to permit *Kelly*, on his Bill, to give Evidence that the Bishop did not dictate the said Letters, and for which Reason we are of Opinion, that the Evidence which *Kelly* might have given touching the Bishop's dictating the said Letters, or not, would have produced no Consequence at all with regard to the Bill pass'd against himself, altho' it must necessarily have contributed to the Proof of the Guilt or Innocence of the Bishop.

7. This House having with great Honour and Justice declared to several Persons produced as Witnesses on this Occasion, that it was not required from them to depose to any thing which did or might tend to their own Accusation; the Testimony of the said *Kelly*, if he had been examined upon Oath, we doubt not, would have been taken under the same just Indulgence; and if he had submitted to have been examined on Oath to the Matters of this Bill, such Examination being, in that respect, voluntary, could not, in our Opinions, have been construed as forced from him by the Authority of this House; and such a Testimony as he might have given would have remained under Consideration and Judgment of this House, as to its Credit and Influence, on all Circumstances, in the same manner as the other Evidence for and against the Bill still does.

Comper
Strafford
Scarsdale
Dartmouth
Lechmere
Pomfret
Bathurst
Salisbury
Northampton
Bingley
Foley
Anglesey

Berkeley de Sw.
Fr. Cestrien
Willoughby de Br.
Masham
Poulet
Compton
Ashburnham
Cardigan
Litchfield
Guilford
Aylesford
Weston

Bruce
Gower
Oxbridge
Exeter
Brook
Craven
Middleton
Hereford
Hay
Denbigh
Wharton.

Die Mercurii 15^o Maii 1723.

Hodie tertia vice lecta est Billa, entituled, *An Act to inflict Pains and Penalties on Francis Lord Bishop of Rochester.*

And after a long Debate,

The Question was put, Whether this Bill shall pass?

It was resolved in the Affirmative.

Content 83.

Not Content 43.

Dissentient?

1. Because the Objection which we thought lay against the Bills of *Plunket* and *Kelly*, that the Commons were thereby let into an equal Share of Judicature with the Lords, does hold stronger, as we apprehend, against the present Bill, since, by means of it, a Lord of Parliament is in Part tryed and adjudged to Punishment in the House of Commons, and reduced to a Necessity, either of letting his Accusation pass undefended in that House, or of appearing there, and, as we take it, derogating from his own Honour, and that of the Lords in general, by answering and making his Defence in the Lower House of Parliament.

2. Because we are of Opinion, that the Commons would be very far from yielding to the Lords any Part of those Powers and Privileges, which are properly theirs by the Constitution, in any Form, or under any Pretext whatsoever: And it seems to us full as reasonable, that the Lords should be as tenacious of the Rights and Privileges which remain to them, as the Commons are on their Part.

3. We think this Bill against a Lord of Parliament, taking its Rise in the House of Commons, ought the rather not to have received any Countenance in this House, for that, as it appeared to us by the printed Votes of the House of Commons, That House had voted the Bishop Guilty of all the Matters alledged against him in the Bill, before the Bill was brought into that House, and consequently before the Bishop had any Opportunity of being heard: And altho' there be nothing absurd in such a Vote, in order to their accusing by an Impeachment; yet it seems to us absolutely contrary to Justice, which ought to be unprejudic'd, to vote any one Guilty against whom they design to proceed in their Legislative Capacity, or in Nature of Judges, before the Party has an Opportunity to be heard, or the Bill, which is to ascertain the Accusation, is so much as brought in.

4. We are of Opinion, that no Law ought to be passed on purpose to enact, That any one be Guilty in Law, and punished as such, but where such an extraordinary Proceeding is evidently necessary for the Preservation of the State: Whereas the Crime offered to be proved against the Bishop of *Rochester* is, as we conceive, his partaking in a traiterous Conspiracy against the Government,

ment, which Conspiracy, by God's Blessing, is detected and, as we hope, disappointed, without the Aid of such a dangerous Proceeding, as we conceive this to be:

5. Because there are certain known and established Rules of Evidence, which are Part of the Law of the Land, either introduced by Acts of Parliament, or framed by Reason and the Experience of Ages, adjusted as well for the Defence of the Life, Liberty and Property of the Innocent Subject, as the Punishment of the Guilty; and therefore these Rules are, or ought to be constantly adhered to, in all Courts of Justice; and, as we conceive, should be also observed, till altered by Law in both Houses of Parliament, whenever they Try, Judge, and Punish the Subject, tho' in their Legislative Capacity. But since, in many Instances, in this and the two other Proceedings by Bill, we have been taught, by the Opinion of the House, that these Rules of Evidence need not be observed by the Houses acting in their Legislative Capacity, we clearly take it to be a very strong Objection to this manner of Proceeding, that Rules of Law made for the Security of the Subject, are of no Use to him in it; and that the Conclusion from hence is very strong, That therefore it ought not to be taken up, but where clearly necessary, as before affirmed: And we do desire to explain our selves so far upon the Cases of Necessity excepted, as to say, we do not intend to include a Necessity arising purely from an Impossibility of convicting any other way.

6. If it be admitted, that traitorous Correspondencies in Cypher and Can-words may, to a Degree, be discouraged by this sort of Proceeding in which Persons, as we think, are convicted on a more uncertain Evidence than the known Rules of Law admit of, yet we are of Opinion, that Convenience will be much more than out-weigh'd by the Jealousy it must of Necessity, as we conceive, create in the Minds of many of his Majesty's most faithful Subjects, That their Lives, Liberties, and Properties are not safe, after such repeated Examples, as they were before; and by the natural Consequence of this Apprehension, an Abatement of their Zeal for the Government may ensue, excepting such Persons as have had more than ordinary Opportunities of being well instructed in Principles of the utmost Duty and Loyalty.

7. We cannot be for the passing this Bill, because the Evidence produced to make good the Recital of it, or that the Lord Bishop of *Rocheſter* is guilty of the Matter he therein stands accused of, is, in our Opinions, greatly defective and insufficient, both in Law and Reason, to prove that Charge; the Evidence consisting altogether, to the best of our Observation, in Conjectures arising from Circumstances in the intercepted Letters, or in a Comparison of Hand-writings resting on Memory only. And there being, as we think, no Proof of the Bishop's knowing of, or being privy to any of the said Correspondence; and as to the principal Part of the Charge against the Bishop, and on which, as we think, all the rest does depend, viz. the Dictating of the Letters of the 20th of *April* 1722, which the House of Lords seem to have determined that *Kelly* wrote, we are of Opinion, that the Bishop has, in his Defence, very clearly and fully proved, that he did not, nor possibly could, dictate those Letters, or the Substance of any Part thereof to *Kelly*, either on the Days of the Date, or at any Time during several Days before, or next after the Day of their Date, nor was in any Capacity to write them himself, tho' the Letters must have been wrote within that Compass of Time. And we are, upon the whole, of Opinion, That the Proof and Probability of the Lord Bishop of *Rocheſter*'s INNOCENCE, in the Matters he stood charged with, were much stronger than those of his GUILT.

Strafford
Scarsdale
Denbigh
Northampton
Bruce
Salisbury

Poulet
Montjoy
Fr. Cestrien
Dartmouth
Cardigan
Litchfield

Craven
Anglesey
Aylesford
Ashburnham
Hay
Foley

Bathurst

Bathurst
Osborn
Trevor
Gower
Uxbridge
Compton
Weston

Arundel
Masham
Guilford
Berkeley de Str.
Pomfret
Middleton
Willoughby de Br.

Comper
Brook
Hereford
Bingley
Stawell
Oxford
Exeter.

I Dissent for the 6th and 7th Reasons of the foregoing Protestation, and for the following Reasons.

1. Because this extraordinary Method of proceeding by Bills of this Nature against Persons who do not withdraw from Justice, but are willing to undergo a legal Tryal, ought, in my Opinion, to be supported by clear and convincing Evidence; and I apprehend there has been nothing offerr'd to support the Allegations set forth in the Preamble of the *Bill to inflict Pains and Penalties on Francis Lord Bishop of Rochester*, but what depends on decypher'd Letters, forc'd Constructions, and improbable Imuendo's.

2. I conceive, that the Examination of *Philip Neynoe* taken before the Lords of the Council, not sworn to, nor signed; which appears to me to be the Foundation on which the Charge against the Bishop of *Rochester* is built, has been, in my Apprehension, sufficiently proved, by the positive Oaths of three Persons, two of which have been for several Months in separate Custodies, confirmed by other Circumstances, to have been a false and malicious Contrivance of the said *Neynoe*, to save himself from the Hands of Justice, and to work the Destruction of the Bishop of *Rochester*.

3. I do not apprehend, that the Letters of the 20th of *April*, which are suggested to be wrote by *George Kelly*, alias *Johnson*, and dictated by the Bishop, have been sufficiently proved to be the Hand-writing of the said *Kelly*, but on the contrary it appears, to the best of my Judgment, that the Letter of the 20th of *August* (stopt at the Post-Office, and from which the Clerks of the Post-Office, on their Memory only, swore they believed the said Letters of the 20th of *April* to be the same Hand-writing, tho' they never compared two original Letters together during all that Time) has been proved by three credible Witnesses concurring in every Circumstance of their Testimony, and well acquainted with the Hand-writing of the said *Kelly*, not to be his Hand-writing; and I conceive, that the Difference they have observed in the Hand of the said *Kelly*, upon which they ground their Opinions, is sufficiently supported by comparing the said Letter of the 20th of *August* with the Letters wrote by the said *Kelly* to the Lord *Townshend* and *Mr. De la Faye*, during the Time of his Confinement.

4. I do not apprehend, that any Proof has been offered to support what has been so much insisted on, and justly esteemed essential to the Charge, that the Bishop of *Rochester* dictated the Letters of the 20th of *April*; but it has appeared, I conceive, that there has been no Intimacy between the Bishop and the said *Kelly*, and the Testimony of the Bishop's Servants concurring with the Evidence given on that Head, by the Persons that *Kelly* lived in the strictest Correspondence with, leaves, to the best of my Judgment, no Room to doubt, but that the Acquaintance between them was slender and publick; and to suggest from thence, that the Bishop dictated the Letters of the 20th of *April*, when it appear'd, that for many Days before he could not possibly see the said *Kelly*, is, in my Opinion, repugnant to Reason, and contrary to Justice.

W HARTON.

Die

Die Lunæ 2^{do} Maii 1723.

Hodie secunda vice lecta est Billa, entituled, *An Act for granting an Aid to his Majesty, by laying a Tax upon all Papists, and for making such other Persons as, upon due Summons, shall refuse or neglect to take the Oaths therein mentioned, to contribute towards the said Tax, for reimbursing to the Publick Part of the great Expences occasioned by the late Conspiracies, and for discharging the Estates of Papists from the two Third Parts of the Rents and Profits thereof for one Year, and all Ar-rears of the same, and from such Forfeitures as are therein more particularly described.*

After Debate, the Question was put, Whether the said Bill shall be com-mitted?

It was resolved in the Affirmative.

Content 57.

Not Content 42.

Dissentient?

Scarsdale
Bingley
Pomfret

Litchfield
Foley
Gower

Strafford
Uxbridge
Ashburnham.

Die Mercurii 22^{do} Maii 1723.

Hodie tertia vice lecta est eadem Billa, entituled, *An Act, &c.*
The Question being put, Whether the said Bill shall pass?

It was resolved in the Affirmative.

Content	48.	21.	69.
Not Content	36.	18.	54.

Dissentient?

Uxbridge
Bingley
Gower
Foley
Ashburnham
Lechmere
Litchfield

Scarsdale
Montjoy
Pomfret
Hay
Fr. Cestrien?
Willoughby Br.
Strafford

Cowper
Weston
Coventry
Bathurst
Tadcaster?

F I N I S